

Internal Revenue Service

Department of the Treasury
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Washington, DC 20224

Date

5/18/97

Signature

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

APR - 1 1997

Employer Identification Number:

Key District:

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were formed as an association on August 8, 1996 pursuant to an organizing and operating document called Articles of Association and Bylaws and Rules (the "Articles/Bylaws") which was signed by [REDACTED]. The Articles/Bylaws provide that the association is a religious order and that it is organized exclusively for religious, charitable, educational and literary purposes. [REDACTED] signature on the Articles/Articles is also to accept the positions and responsibilities conferred to him therein as your Presiding Patriarch and Chief Executive Officer.

On December 25, 1996, you have amended the Articles/Bylaws deleting certain of its provisions. Among the deleted provisions are as follows: 1) the appointment of the Presiding Patriarch for life; 2) your doctrines and teachings against social security, government and private insurance, unemployment, medicare, medicaid and other similar public programs which you consider them to be placing undue burden to the public; 3) All compensation and earning to be given to the [REDACTED], including a Letter of Direction on employment, with an accompanying W-9, which will direct government and private employers and other payors to distribute funds directly to the [REDACTED]; 4) the establishment of "stewardship accounts" on funds and other assets turned over by members to the [REDACTED] for payment of living expenses of officer and members of the [REDACTED].

Under the amended Articles/Bylaws, [REDACTED] remains in the position of the Presiding Patriarch which is the chief executive officer and spiritual authority of the Religious Order until his retirement from such position or his untimely death. Your other officers include [REDACTED] and her son, [REDACTED] both as trustees.

The amended Articles/Bylaws still provides, however, for the support and payment of the [REDACTED], to the teachers, and other functionaries and workers of the association, and of any congregation. Also, that benefits shall be paid to their widows, children or others in need. At Section 4.

Your claim for exemption is as a church and represented that your activities will include conducting worship services and Bible studies. You represent that you hold services at [REDACTED], the rented residence of [REDACTED]. Sometimes they are held at the homes of other attendees. You hold worship services on bi-monthly basis to a small group of an average of eight attendees. Services and Bible studies are conducted by [REDACTED] as pastor, and sometimes [REDACTED] as assistant pastor. Neither [REDACTED] is an ordained minister. Also, neither had formal educational training but you represent that both have some seminary training and a combined total of over 70 years of church works.

You will rely for financial support from public contributions. As a new organization, your budget shows that funds will be used for payment of rent and other expenses.

Section 501(c)(3) of the Code provides exemption to organizations organized and operated exclusively for religious, educational, charitable or other exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations provides that the words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creators, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 76-323, 1976-2 C.B. 18, held a member of a church group or religious order directed by superiors to secure outside employment and to turn over all remuneration received, must include in gross income the entire remuneration received since the member was not acting as an agent of the church or religious order but was receiving compensation on his own behalf and transferring it to the church or religious order.

Rev. Rul. 77-290, 1977-2 C.B. 26, held that where payment were made to the church or religious order, and the individual did not act as an agent of the church or order (subject to direction and control of the church in performing the work of the third party), the fact of payment did not preclude the inclusion of the remuneration received in the individual's gross income.

Although Rev. Rul. 69-266, 1969-1 C.B. 151, does not involve the inurement issue, it can be applied to deny recognition of exemption under section 501(c)(3) of the Code of an organization established for the primary purpose of reducing the Federal income tax liability of its creators. The situation to which Rev. Rul. 69-266 is applicable is where an individual takes a vow of poverty and assigns his/her assets and income to the church he/she has established, with a major portion of the income assigned used for the benefit of the individual creators and with only a relatively small portion of the income used for charitable purposes. Although in particular circumstances the "church" may not be engaged in a commercial operation for the benefit of its creators, as was the case in Rev. Rul. 69-266, the following principle contained in Rev. Rul. 69-266 may be applied in denying recognition of exemption under section 501(c)(3): The organization is operated by its creator essentially as an attempt to reduce his personal Federal income tax liability while still enjoying the benefit of his earnings. Thus, the organization's

primary function is to serve the private interests of its creator(s) rather than a public interest.

In Lucas v. Earl, 281 U.S. 111 (1930), the Supreme Court of the United States held that an assignment of compensation for personal services to another individual or entity is an ineffectual method of relieving a taxpayer of Federal income tax liability on the compensation assigned, regardless of the motivation behind the transfer. Therefore, in the usual case where an individual assigns his income to the church he has established, in an attempt to escape Federal tax liability, the income will, nevertheless, be taxed to the individual.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U. S. 279 (1945), the Supreme Court of the United States interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In Beth-El Ministries, Inc. v. U.S., 79-2 U.S.T.C., 9412, the court was asked to determine whether the organization is a religious organization exempt under section 501(c)(3) of the Code. Members donated their salaries to the organization which in turn provided the members with living expenses such as food, clothing, shelter and other benefits. The court found that the organization was not operated exclusively for religious purposes because its net earnings inured to the benefit of members, and thus, was not exempt under section 501(c)(3).

In Church of Modern Enlightenment v. Commissioner, T.C. Memo 1988-312 (July 25, 1988), an organization was formed for religious purposes and to operate a church. The organization's sole source of income was contributions received from its principal officer of his full salaries from outside employment. The organization's funds were used primarily for payment of parsonage expenses and contributions. The parsonage expenses were living expenses of the principal officer and the contributions were payments of the officer's withholding taxes on salaries from outside employment. The Tax Court memorandum indicates that the organization is not exempt under section 501(c)(3) of the Code because the organization is not operated exclusively for religious purposes and that its income inures to the benefit of a private individual. See also Good Friendship Temple v. Commissioner, T.C. Memo 1988-313 9 (July 25, 1988).

In New Life Tabernacle v. Commissioner, T.C. Memo 1982-367 (1982), the petitioner is engaged in conducting weekly worship services, prayer services and Bible study. The petitioner's income consists of contributions from members' salaries from employment in secular jobs and income from social security. Substantially all of the funds are used for the payment of members' living expenses such as food, clothing, housing, utilities, automobile expenses and weekly allowances. The petitioner was held not to qualify for exemption under section 501(c)(3) of the Code because the petitioner's net income inures to the benefit of private individuals.

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991), the appellate court determined that the organization is not a church by adopting fourteen criteria as a guide. These criteria or characteristics are: (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine and discipline; (5) a distinct religious history; (6) a membership not associated with any church or denomination; (7) a complete organization of ordained ministers ministering to their congregations; (8) ordained ministers selected after completing prescribed courses of study; (9) a literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) Sunday schools for the religious instruction of the young; and (14) schools for the preparation of its ministers. See also Lutheran Society Services of Minn. v. U.S., 758 F.2d 1283 (8th Cir. 1985), and American Guidance Foundation, Inc. v. U.S., 490 F. Suppl. 304 (D.D.C. 1980).

The court in American Guidance Foundation, Inc., citing Chapman v. Commissioner, 48 T.C. 358, stated that while some of the fourteen characteristics are minor, others, e.g., the existence of an established congregation served by an organized ministry, the provisions of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance. Further, the court stated that at a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship.

In Church of the Transfiguring Spirit v. Commissioner, 76 T.C. 1 (1981), the Tax Court considers an organization's petition for exemption under section 501(c)(3) of the Code. The organization is controlled by a husband and wife ministers. The organization conducted religious services in the home of the ministers. Virtually all of the organization's income which were contributed by the ministers/officers were in turn virtually all expended for their housing allowance. The court was unable to

find that the organization was operated exclusively for exempt purposes or that no part of its net earnings inured to the benefit of a private individual. Nor did the court characterize the amount paid by the organization to its ministers/officers as reasonable compensation paid by an organization operating for public and not private interests. Accordingly, the court found the organization as not exempt under section 501(c)(3).

We have analyzed whether you are a church in your claim for exemption under section 501(c)(3) of the Code applying the criteria and other guidelines established by the courts in the above cited cases. Our analysis indicates that you fail to establish that you are a church. The information presented indicates that you do not have several characteristics generally associated with a church. Among them are a complete organization of ordained ministers ministering to a congregation; ordained ministers selected after completing prescribed courses of study; a literature of its own; established places of worship; regular congregations; regular religious services; Sunday schools for the religious instruction of the young; and schools for the preparation of its ministers.

We have also considered the arrangement whereby you conduct certain of your activities at the residence of your principal officers. While we acknowledged that the monthly rental on the facility is equally shared between you and your principal officers, we find that your limited use of the facility as compared to your officers' substantial use as residence is serving the interest of a private individual. By serving private rather than public interests, you are not operated exclusively for an exempt purpose pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Your method of operation is indistinguishable from that of the organizations described in the Beth-El Ministries, Inc., Church of Modern Enlightenment, and New Life Tabernacle court cases found not to qualify for exemption under section 501(c)(3) of the Code.

Because you are not a church and you are not operated exclusively for exempt purposes described in section 501(c)(3) of the Code, we conclude that you do not qualify for exemption under section under section 501(c)(3).

You are required to file federal income tax returns on Form 1120.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of

[REDACTED]
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your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Los Angeles, California. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

Sincerely,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
[REDACTED]

copy: [REDACTED]
Attn: Chief, EP/EO Division